

CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adoption of Resolution of Authority and Resolution of Public Interest and Necessity, thereby formally Authorizing the Acquisition of Property through the Eminent Domain Process (Lower Sacramento Road Widening – 1164 South Lower Sacramento Road - Valentine)

MEETING DATE: February 5, 2003

PREPARED BY: Randall A. Hays, City Attorney

RECOMMENDATION: That the City Council adopt Resolution of Authority and Resolution of Public Interest and Necessity, thereby formally authorizing the acquisition of property through the eminent domain process.

BACKGROUND: The purpose of this agenda item is twofold.

First, it is designed to provide the property owner the opportunity to appear and be heard on those topics contained in the Code of Civil Procedure (CCP) §1240.030. This requirement to afford the property owner this opportunity to be heard is found in CCP §1245.235.

The topics found in CCP §1240.030 that may be addressed by the property owner are as follows: a) does the public interest and necessity require the project? b) is the project planned or located in the manner that will be most compatible with the greatest possible good and the least private injury? and c) the property sought to be acquired is necessary for the project. The amount of compensation to be paid for the property is not a proper subject for this hearing. A property owner will often bring compensation up however.

In order to appear and be heard as outlined in the previous paragraph, a property owner is required to file a written request to appear within fifteen (15) days after the Notice of Hearing was mailed. Failure to file such a request, results in a waiver of the right to appear and be heard (CCP §1245.235 (b)(3)). The property owner, Menarda Valentine was notified of this requirement in the letter sent to her on January 17, 2003. A written request to appear has not been received within the required time frame.

The second purpose is to adopt a resolution establishing the need of the City to exercise its power of eminent domain. By doing so, the Council establishes clear statutory authority upon which the use of the power of eminent domain can be based. Government Code §37350.5, clearly sets forth that the acquisition of property for street expansion purposes is authorized.

APPROVED: _____

H. Dixon Flynn - City Manager

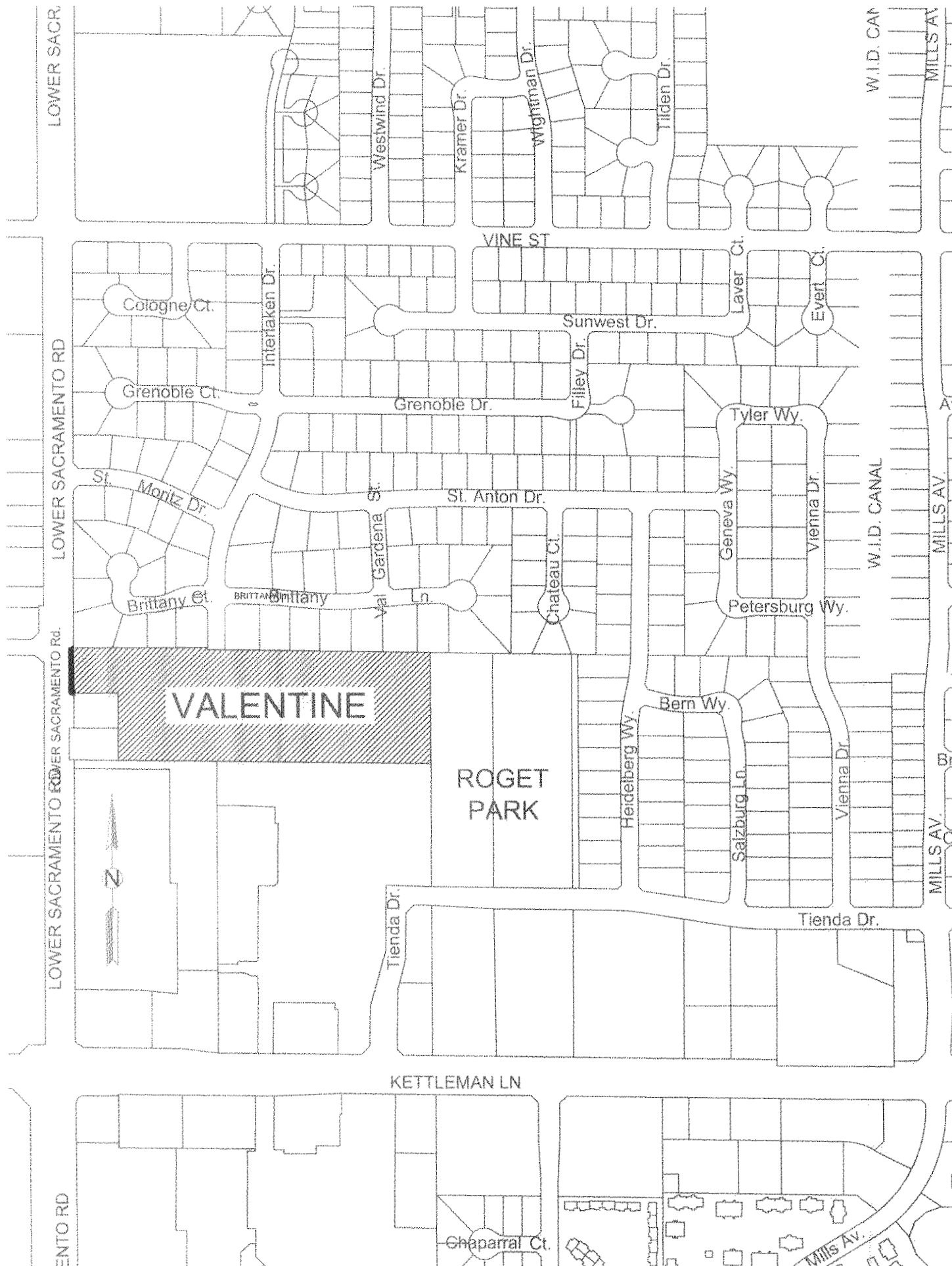
As can be seen from this memo the eminent domain process is governed by express statutory provisions. CCP §1245.240 specifically requires that a resolution of public interest and necessity be adopted by a two-thirds vote of all the members of the City Council. Since two-thirds of five is a number greater than three, it takes four affirmative votes to adopt the required resolution.

FUNDING: Not applicable.

Respectfully submitted,



Randall A. Hays, City Attorney



LOWER SACRAMENTO Rd.

VALENTINE

BRITTANY Ln.

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When Recorded, Return to:
City of Lodi
City Clerk's Office
P.O. Box 3006
Lodi, CA 95241-1910

RESOLUTION NO. 2003-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI
FINDING THAT PUBLIC INTEREST AND NECESSITY REQUIRE
THE ACQUISITION FOR THE LOWER SACRAMENTO ROAD
WIDENING PROJECT PURPOSES A PORTION OF THE
PROPERTY OWNED BY ANTONIO R. VALENTINE AND MENARDA
N. VALENTINE, TRUSTEES OF THE VALENTINE FAMILY TRUST,
COMMONLY REFERRED TO AS ASSESSOR'S PARCEL NUMBER
027-040-12 (1164 SOUTH LOWER SACRAMENTO ROAD)

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BE IT RESOLVED by the City Council of the City of Lodi (hereinafter referred to as "City") as follows:

Section 1. The City finds and determines that public interest and necessity require the widening of Lower Sacramento Road, through the acquisition for road right-of-way purposes, an easement over the real property owned by Antonio R. Valentine and Menarda N. Valentine, Trustees of the Valentine Family Trust, commonly referred to as APN #027-040-12.

Section 2. Section 37350.5 of the California Government Code and California State Constitution, Article II, §9 authorizes the City to acquire by eminent domain property for road widening purposes (street, curb, gutter, and sidewalk improvements).

Section 3. An offer required by §7267.2 of the Government Code has been made to the owner of record of the real property sought to be taken by these eminent domain proceedings.

Section 4. The City finds and determines that the subject project has been planned and is to be located in the manner that will be most compatible with the greatest public good and the least private injury.

Section 5. The City finds and determines that the acquisition of the real property interests depicted in "Exhibit A" attached hereto, situate in the City of Lodi, County of San Joaquin, State of California, are necessary for the construction and maintenance of the aforesaid public improvements, and the taking of said real property interest is necessary therefor.

Section 6. The City has previously ratified the Negative Declaration prepared for this project per the California Code of Regulations, Title 14, Chapter 3, Article 19, §15301 showing that it has no substantial impact upon the environment and that an environmental impact report is not necessary.

Section 7. The City Attorney of the City of Lodi is hereby authorized, empowered, and directed to perform as follows:

- a. Commence an action or actions in eminent domain in the Superior Court of the State of California, County of San Joaquin, in the name of the City of Lodi to acquire necessary real property interests; and
- b. To incur in the name of the City of Lodi, and on behalf thereof, all obligations and expenses necessary to acquire the above-mentioned real property interests.

Section 8. The City Clerk of the City of Lodi is hereby directed to cause a certified copy of this Resolution to be recorded in the office of the San Joaquin County Clerk/Recorder.

Dated: February 5, 2003

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I hereby certify that Resolution No. 2003-19 was introduced and read by the City Council of the City of Lodi in a regular meeting held February 5, 2003, and was duly adopted at said meeting by a four-fifths vote as follow:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Howard, Land, and
Mayor Hitchcock

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None




Susan Hitchcock
City of Lodi

Attest:



SUSAN J. BLACKSTON
City Clerk

APPROVED AS TO FORM:



RANDALL A. HAYS
City Attorney

